STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 19, 2015
v	No. 320928 Oakland Circuit Court
GRADY RAMAIL SHEPPARD, Defendant-Appellant.	LC No. 2013-245948-FH

Before: HOEKSTRA, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of possession with intent to deliver less than 50 grams of a controlled substance, MCL 333.7401(2)(a)(iv), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a controlled substance, MCL 333.7403(2)(b)(ii). Defendant was sentenced to 18 months' probation. Because the search in this case was objectively reasonable at the time it was conducted in light of binding Michigan precedent, defendant was not entitled to suppression of the evidence in question and we affirm.

After receiving a tip from a confidential informant about marijuana sales at defendant's apartment, with the permission of the apartment manager, the police conducted a sweep of the common hallways in the building using a K-9 drug sniffing dog. During two such sweeps, dogs alerted positive outside of defendant's apartment. Based on this information, the police obtained a warrant to search defendant's apartment and, inside his apartment, they found marijuana, dihydrocodeine pills, drug packaging materials, and a large sum of cash. A dog similarly alerted positive outside of defendant's vehicle, and police also found marijuana and drug packaging materials in defendant's car. Before trial, defendant moved to suppress the evidence found in his apartment and car, but the trial court denied his motion. Following a bench trial, defendant was convicted as noted above. He now appeals as of right.

On appeal, defendant argues that the trial court erroneously concluded that a canine sniff outside his apartment door was not a Fourth Amendment violation and, therefore, erroneously denied defendant's motion to suppress the evidence seized during the execution of a search warrant predicated on the canine alerts. Defendant argues that the canine sniff was impermissible because it occurred inside the curtilage of his residence. In making this argument, defendant relies upon the United States Supreme Court holding in *Florida v Jardines*, 569 US ___; 133 S Ct 1409; 185 L Ed 2d 495 (2013), that a warrantless canine sniff within the curtilage

of a residence constituted a search and violated the Fourth Amendment. In opposition to defendant's argument, the prosecution asserts on appeal that the common hallway outside of defendant's apartment did not constitute part of the curtilage of his residence and that, in any event, the police reasonably relied on binding precedent when using the sniffing dogs such that exclusion of the evidence would be inappropriate.

On the facts of this case, we find it unnecessary to consider whether the area outside of defendant's apartment door was curtilage because, by using canine sniffing dogs, the police were acting in reasonable reliance on settled law, which indicated that a canine sniff was not a search under the Fourth Amendment. The United States Supreme Court's opinion in *Davis v United States*, 564 US ___; 131 S Ct 2419; 180 L Ed 2d 285 (2011) made clear that suppression of evidence is not appropriate when, viewed objectively, the police have reasonably relied upon binding judicial precedent. *Davis*, 131 S Ct at 2423-2424, 2428. In such cases, because they have acted in strict compliance with binding precedent, the police behavior is "not wrongful," and the deterrent rationale of the exclusionary rule is not served by suppressing the evidence. *Id*. at 2428-2429. For this reason, "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." *Id.* at 2423-2424.

Relevant to the police conduct in this case, before the United States Supreme Court's decision in *Jardines*, binding precedent in Michigan regarding warrantless canine sniffs was articulated by this Court in *People v Jones*, 279 Mich App 86; 755 NW2d 224 (2008). In that case, this Court held that a canine sniff outside of an individual's residence does not constitute a search for purposes of the Fourth Amendment provided that the dog was lawfully present. *Id.* at 94. In this case, the police conducting the canine sniffs received a key and permission from the apartment manager to enter the building. The canine sniff in this case was conducted in February 2013; the *Jardines* opinion was released in March 2013. Given this Court's decision in *Jones*, at the time of the canine sniff, binding judicial precedent in Michigan held that a canine sniff was not a Fourth Amendment search. Because the police acted in compliance with binding precedent in effect at the time of the canine sniff in this case, their behavior was not wrongful. See *Davis*, 131 S Ct at 2428-2429. Accordingly, suppression would be inappropriate in this case because of the lack of deterrent value under these facts. *Id.* at 2434. Thus, the trial court did not err in denying defendant's motion to suppress.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Stephen L. Borrello